

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

FREEDOM FROM RELIGION
FOUNDATION, INC., ANNE NICOL
GAYLOR, ANNIE LAURIE GAYLOR,
PAUL GAYLOR, DAN BARKER,
PHYLLIS ROSE, and JILL DEAN,

Plaintiffs,

v.

PRESIDENT BARACK OBAMA,
WHITE HOUSE PRESS SECRETARY
ROBERT L. GIBBS, WISCONSIN GOVERNOR
JIM DOYLE, and SHIRLEY DOBSON,
CHAIRMAN OF THE NATIONAL DAY
OF PRAYER TASK FORCE,

Defendants.

Case No. 08-CV-588

**PLAINTIFFS' RESPONSES TO FEDERAL DEFENDANTS'
STATEMENT OF PROPOSED FINDINGS OF FACT**

The plaintiffs respond to the Federal Defendants' Proposed Findings of Fact as follows:

1. Anne Gaylor learned of President Obama's 2009 National Day of Prayer proclamation from her daughter, Annie Laurie Gaylor.

Response: No dispute as to 2009, but incomplete regarding Ms. Gaylor's long history of awareness of and opposition to the National Day of Prayer. (See Ex. 1 at 2-3, 9-12, 40-44.)¹

2. Annie Laurie Gaylor actively monitored the White House website in advance of President Obama's 2009 National Day of Prayer proclamation.

¹Record cites refer to the exhibits submitted with Bolton Affidavit.

Response: No dispute, but incomplete regarding Ms. Gaylor's long history of awareness of and opposition to the National Day of Prayer. (See Ex.1 at 3-4, 6-8, 13-38, 44-45.)

3. Annie Laurie Gaylor actively monitored the NDP Task Force website in advance of President Obama's 2009 National Day of Prayer proclamation.

Response: No dispute, but incomplete regarding Ms. Gaylor's long history of opposing the National Day of Prayer. (See Response to No. 2.)

4. Annie Laurie Gaylor verified the wording of President Obama's 2009 National Day of Prayer proclamation at the White House's website.

Response: No dispute.

5. FFRF monitors the news under Annie Laurie Gaylor's direction, and looks for updates regarding the National Day of Prayer at the White House website, NDP Task Force website, and various governor websites.

Response: No dispute, but incomplete as to Ms. Gaylor's knowledge and awareness of National Day of Prayer violations of Establishment Clause. (See Response to No. 2.)

6. Since 1990, Anne Gaylor has encouraged FFRF members actively to monitor and protest celebrations of the National Day of Prayer.

Response: No dispute.

7. Paul Gaylor learned of President Obama's 2009 National Day of Prayer proclamation from Anne Gaylor.

Response: No dispute, but incomplete as to Mr. Gaylor's knowledge of and opposition to National Day of Prayer. (Ex. 1 at 4, 37.)

8. Dan Barker has watched the National Day of Prayer over the course of several years due to his work at FFRF.

Response: No dispute, but incomplete as to Mr. Barker's knowledge of and opposition to National Day of Prayer. (Ex. 1 at 4-5, 7, 38, 46-47.)

9. Dan Barker learned by watching the news on the internet on either May 7 or May 8, 2009 that President Obama had issued a National Day of Prayer proclamation on May 7, 2009.

Response: No dispute.

10. Phyllis Rose learned of President Obama's 2009 National Day of Prayer Proclamation while working at FFRF.

Response: No dispute, but incomplete as to Ms. Rose's knowledge of and opposition to National Day of Prayer. (Ex. 1 at 38-39.)

11. Jill Dean has no specific recollection of President Obama's 2009 National Day of Prayer proclamation.

Response: No dispute, but incomplete as to Ms. Dean's knowledge of and opposition to National Day of Prayer. (Ex. 1 at 4-5.)

12. Anne Gaylor learned of President Bush's 2008 National Day of Prayer proclamation through her daughter, Annie Laurie Gaylor.

Response: No dispute, but incomplete as to Ms. Gaylor's knowledge of and long history of opposition to National Day of Prayer. (See Response to No. 1.)

13. Annie Laurie Gaylor has routinely monitored the NDP Task Force website in the spring for many years.

Response: No dispute, but incomplete as to Mr. Gaylor's knowledge of and opposition to National Day of Prayer. (See Response to No. 2.)

14. Annie Laurie Gaylor corroborated President Bush's 2008 National Day of Prayer proclamation at the White House's website.

Response: No dispute.

15. Annie Laurie Gaylor's usual practice is to corroborate National Day of Prayer proclamations at the White House's website.

Response: No dispute.

16. Annie Laurie Gaylor has been on a "Focus on the Family" mailing list since sometime in the late 1980s or early 1990s, from which she receives annual mailings about the National Day of Prayer and the NDP Task Force.

Response: No dispute.

17. Annie Laurie Gaylor routinely checks the NDP Task Force website every year.

Response: No dispute.

18. Paul Gaylor learned of President Bush's 2008 National Day of Prayer proclamation through Anne Gaylor.

Response: No dispute, but incomplete as to Mr. Gaylor's knowledge of and opposition to National Day of Prayer. (See Response to No. 7.)

19. Dan Barker visited the NDP Task Force's website in 2008 to determine what wording they were recommending for National Day of Prayer proclamations.

Response: No dispute, but incomplete as to Mr. Barker's knowledge of and opposition to National Day of Prayer. (Ex. 1 at 4-5, 7, 38, 46-47.)

20. Dan Barker learned by telephone from FFRF staff that President Bush issued a

National Day of Prayer proclamation in 2008, and then searched the internet to determine whether President Bush had incorporated the NDP Task Force's theme "Prayer! America's Strength and Shield."

Response: No dispute, but incomplete as to Mr. Barker's knowledge of and opposition to National Day of Prayer. Also, Mr. Barker was traveling out of town on FFRF business when he learned of President Bush's Proclamation. (See Response to No. 8.)

21. Phyllis Rose learned of President Bush's 2008 National Day of Prayer proclamation while working at FFRF.

Response: No dispute, but incomplete as to Ms. Rose's knowledge of and opposition to National Day of Prayer. (Ex. 1 at 38-39.)

22. Jill Dean first became aware of President Bush's 2008 National Day of Prayer proclamation as a result of a prayer breakfast held in Burnett County, Wisconsin.

Response: No dispute.

23. FFRF members have attended National Day of Prayer or related prayer breakfast events in order to monitor them.

Response: No dispute.

24. FFRF members have picketed National Day of Prayer events held on courthouse steps or at municipal buildings.

Response: No dispute.

25. FFRF members "greatly enjoy fighting back" against what they perceive to be Establishment Clause violations.

Response: Misleading because ignores distress caused by government exhortations to pray and sincerity of members' opposition to Establishment Clause violations. (Ex. 1 at 2, 5, 38-39, 40-47.)

26. FFRF does not have any expenditures relating to the National Day of Prayer that are delineated by specific budgetary line items.

Response: Misleading because staff time and resources employed to combat NDP violations. (Ex. 1 at 39-40.)

27. FFRF has no documents sufficient to disclose expenditures made by FFRF National Day of Prayer.

Response: Misleading because staff time and resources are employed to combat NDP violations. (Ex. 1 at 39-40.) In 2005, for example, FFRF sent letters to each governor objecting to NDP, which obviously involved organizational time and expense. (Ex. 98.)

28. FFRF's purpose is to work for the separation of state and church and to educate the public on matters relating to nontheism.

Response: No dispute.

29. FFRF receives and acts on complaints of prayers in public programs.

Response: No dispute.

30. FFRF generates significant publicity through its legal challenges.

Response: Dispute that accurately conveys FFRF's use of litigation, which raises national awareness and ends violations of Establishment Clause, but litigation is not the exclusive means used. (Ex. 112 at 5.)

31. Annie Laurie Gaylor views this lawsuit as "splashy."

Response: Dispute that accurately conveys Ms. Gaylor's long commitment to opposing the National Day of Prayer. (See Response to No. 2.) The proposed Finding also is misleading because clearly Ms. Gaylor stated her intent to alert Ms. Dean that being a named plaintiff in this suit should be weighed carefully.

32. Annie Laurie Gaylor views this lawsuit as "highly educational."

Response: No dispute, but affirmatively note that the purpose of this lawsuit is to end an Establishment Clause violation. (Ex. 114 at 2.)

33. One of FFRF's functions is to file lawsuits to correct what the organization perceives to be violations of the Establishment Clause.

Response: No dispute that litigation is one means of addressing Establishment Clause violations, but this is not exclusive means used. (Ex. 113.)

34. One of FFRF's organizational goals is to "make a legal fuss!"

Response: Dispute. Mis-states FFRF goals and actions. (Exs. 112-114.) FFRF's organizational brochure notes that the Foundation acts on countless violations of Separation of church and state on behalf of members of the public. (Ex. 112.)

35. FFRF has used the existence of the National Day of Prayer lawsuit in its fundraising efforts.

Response: Dispute that the NDP suit has been singled out among FFRF's various activities. (Ex. 114.) The NDP lawsuit is merely identified briefly as being among the Foundation's many on-going activities.

36. The first paragraph of President Obama's 2009 National Day of Prayer proclamation acknowledges the historical role of prayer in American society.

Response: Dispute that the referenced paragraph is historically accurate and affirmatively alleged that the Proclamation proceeds to expressly “call upon American to pray.”

37. President Obama’s 2009 National Day of Prayer proclamation explicitly acknowledged the right of individuals to “worship or not worship according to the dictates of their conscience.”

Response: Dispute because the Proclamation expressly “calls upon Americans to pray.”

38. President Obama’s 2009 National Day of Prayer proclamation did not incorporate the NDP Task Force’s theme, “Prayer. . . America’s Hope.”

Response: No dispute.

39. President Obama did not host any public ceremonies at the White House in 2009 relating to the National Day of Prayer.

Response: No dispute.

Dated at Madison, Wisconsin, this 16th day of November, 2009.

/s/ Richard L. Bolton
Richard L. Bolton, State Bar No. 1012552
1 S. Pinckney Street, 4th Floor
P. O. Box 927
Madison, WI 53701-0927
PH: (608) 257-9521
FAX: (608) 283-1709
rbolton@boardmanlawfirm.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2009, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification electronically to all attorneys of record.

/s/Lisa E. Hibbard